



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0069; FRL-10023-62-Region 3]

Air Plan Approval; Delaware; Nonattainment New Source Review Requirements for 2015

8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). The revision fulfills Delaware's nonattainment new source review (NNSR) SIP element requirement for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0069. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Amy Johansen, Permits Branch (3AD10),

Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2156. Ms. Johansen can also be reached via electronic mail at johansen.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 24, 2021 (86 FR 15634), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of Delaware's certification that its existing NNSR program, covering the Delaware portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (Philadelphia Area) nonattainment area (which includes New Castle County) for the 2015 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 Code of Federal Regulations (CFR) 51.165, as amended by the final rule titled "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements" (SIP Requirements Rule), for ozone and its precursors. See 83 FR 62998 (December 6, 2018). The formal SIP revision was submitted by Delaware on August 3, 2020.

II. Summary of SIP Revision and EPA Analysis

Delaware's SIP approved NNSR program, established in Title 7 Delaware Administrative Code (DE Admin Code) 1125 (*Requirements for Preconstruction Review*), applies to the construction and modification of major stationary sources in nonattainment areas. In its August 3, 2020 SIP revision, Delaware certifies that the version of Title 7 DE Admin Code Section 1125 approved in the SIP is at least as stringent as the Federal NNSR requirements for the Philadelphia Area.¹ EPA last approved Delaware's major NNSR program as being consistent with Federal NNSR requirements on August 12, 2019. 84 FR 39758 (August 12, 2019). In that

¹ On October 20, 2016, EPA disapproved a proposed SIP revision that sought to include additional ERC provisions, adopted by Delaware on December 11, 2016, into the Delaware SIP, specifically, 7 DE Admin Code 1125 Sections 2.5.5 and 2.5.6. 81 FR 72529. Since EPA disapproved these provisions, the previously approved provisions that EPA approved into Delaware's SIP on October 2, 2012 remain applicable Federal requirements. 77 FR 60053.

action, EPA approved DNREC's 2008 Ozone Certification SIP revision for NNSR.

Delaware has chosen not to include certain optional NNSR provisions that EPA could approve, pertaining to emissions change of VOC in extreme nonattainment areas and emission reduction credits. Delaware's choice not to include these provisions does not affect EPA's determination regarding the approvability of its August 3, 2020 submittal, and they were not discussed in this rule.²

Other specific requirements and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. One supportive comment was received for this action, which can be found in Docket ID Number EPA-R03-OAR-2021-0069.

III. Final Action

For the reasons stated in the NPRM, EPA has concluded that Delaware's submission fulfills the 40 CFR 51.1114 revision requirements, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. EPA is approving Delaware's August 3, 2020 SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Philadelphia Area to the Delaware SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

² DNREC provided information regarding anti-backsliding in its August 3, 2020 SIP submittal to EPA, which was not a requirement of EPA's 2015 Ozone SIP Requirements Rule. See 83 FR 62998 (December 6, 2018). EPA noted in the 2015 Ozone SIP Requirements Rule that it would address anti-backsliding in a future rulemaking action; therefore, EPA will not be acting on anything related to anti-backsliding in this action.

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Delaware’s NNSR program and the 2015 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2021

Diana Esher,
Acting Regional Administrator,

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, the table in paragraph (e) is amended by adding an entry for “2015 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)” at the end of the table to read as follows:

§ 52.420 Identification of plan.

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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2015 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)	Delaware portion of the Philadelphia-Wilmington-Atlantic City nonattainment area (which includes New Castle County)	08/03/20	<u>[Insert date of publication in the Federal Register],</u> <u>[Insert Federal Register citation]</u>	
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[FR Doc. 2021-10039 Filed: 5/12/2021 8:45 am; Publication Date: 5/13/2021]